

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GUADALUPE ROCHA-FERNANDEZ,
BOP No. 29255298,

Civil No. 14cv0352 LAB (MDD)

Plaintiff

UNITED STATES OF AMERICA.

Defendant.

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING CASE WITHOUT
PREJUDICE PURSUANT TO
28 U.S.C. § 1915(a)**

[ECF Doc. No. 3]

Plaintiff, a prisoner currently incarcerated at Giles W. Dalby Correctional Facility located in Post, Texas, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [ECF Doc. No. 3].

J. MOTION TO PROCEED IFP

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400.¹ *See* 28

¹In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay an additional administrative fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50 administrative

1 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is
 2 granted leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a). *See*
 3 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176,
 4 1177 (9th Cir. 1999). "Under the PLRA [Prison Litigation Reform Act], all prisoners who file
 5 IFP civil actions must pay the full amount of the filing fee," regardless of whether the action is
 6 ultimately dismissed for any reason. *See Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002)
 7 (citing 28 U.S.C. § 1915(b)(1) & (2)).

8 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also
 9 submit a "certified copy of the trust fund account statement (or institutional equivalent) for the
 10 prisoner for the 6-month period immediately preceding the filing of the complaint...." 28 U.S.C.
 11 § 1915(a)(2). From the certified trust account statement, the Court assesses an initial payment
 12 of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the
 13 average monthly balance in the account for the past six months, whichever is greater, unless the
 14 prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter,
 15 the institution having custody of the prisoner must collect subsequent payments, assessed at 20%
 16 of the preceding month's income, in any month in which the prisoner's account exceeds \$10, and
 17 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.
 18 § 1915(b)(2).

19 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a), he has
 20 not attached a certified copy of his prison trust account statement for the 6-month period
 21 immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL.
 22 CIVLR 3.2. Section 1915(a)(2) clearly mandates that prisoners "seeking to bring a civil action
 23 ...without prepayment of fees ... *shall* submit a certified copy of the trust fund account statement
 24 (or institutional equivalent) ... for the 6-month period immediately preceding the filing of the
 25 complaint." 28 U.S.C. § 1915(a)(2) (emphasis added).

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fee is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 Without Plaintiff's trust account statement, the Court is simply unable to assess the
2 appropriate amount of the filing fee which is statutorily required to initiate the prosecution of
3 this action. *See* 28 U.S.C. § 1915(b)(1).

4 **II. CONCLUSION AND ORDER**

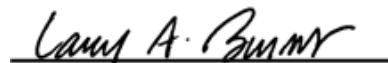
5 For the reasons set forth above, **IT IS ORDERED** that:

6 (1) Plaintiff's Motion to Proceed IFP [ECF Doc. No. 3] is DENIED and the action is
7 DISMISSED without prejudice for failure to prepay the \$400 filing fee mandated by 28 U.S.C.
8 § 1914(a).

9 (2) Plaintiff is GRANTED an additional forty-five (45) days from the date of this
10 Order to either: (1) pay the entire \$400 statutory and administrative filing fee, **or** (2) file a new
11 Motion to Proceed IFP, *which includes a certified copy of his trust account statement for the 6-*
12 *month period preceding the filing of his Complaint* pursuant to 28 U.S.C. § 1915(a)(2) and S.D.
13 CAL. CIVLR 3.2(b).

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with a
15 Court-approved form "Motion and Declaration in Support of Motion to Proceed IFP" in this
16 matter. If Plaintiff neither pays the \$400 filing fee in full nor sufficiently completes and files
17 the attached Motion to Proceed IFP, *together with a certified copy of his trust account statement*
18 *within 45 days*, this action shall remain closed without further Order of the Court.

19 DATED: April 21, 2014

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22 **HONORABLE LARRY ALAN BURNS**
23 United States District Judge

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